

Calendar No. 1096

110TH CONGRESS }
2d Session }

SENATE

{ REPORT
110-513 }

OIL SPILL PREVENTION ACT OF 2008

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2699



SEPTEMBER 26 (legislative day, SEPTEMBER 17), 2008.—Ordered to be
printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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SEPTEMBER 26 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

Mr. INOUE, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 2699]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2699), to require new vessels for carrying oil fuel to have double hulls, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 2699, the Oil Spill Prevention Act of 2008 would make improvements to design and construction of fuel tanks for non-tank vessels and to the medical review program for merchant mariners.

BACKGROUND AND NEEDS

Oil spills that result from accidents, groundings, or collisions create substantial environmental and economic damage. The most expensive spill in U.S. waters, the 1989 tank vessel¹ *Exxon Valdez* spill in Alaska, cost \$2.5 billion to clean up, or \$9.5 billion including fines and claims settlements. Since 1989, less expensive but still significant spills have occurred. In November 2007, the non-tank vessel² *Cosco Busan* spilled 58,000 gallons of fuel oil into the San Francisco Bay. The *Cosco Busan* had fuel tanks capable of carrying 2 million gallons of heavy-duty bunker fuel oil. While oil transport and maritime traffic continues to increase, the total number of reported spills has generally declined each year since 1990

¹A tank vessel transports oil or hazardous materials in bulk.

²A non-tank vessel transports other types of cargo or provides other services, for example offshore supply vessels, passenger vessels, fishing vessels, or containerized cargo vessels.

when the Oil Pollution Act of 1990 was signed into law. According to Coast Guard oil spill statistics compiled between 1973 and 2004, non-tank vessels and fishing vessels now account for the highest number of spill incidents; however, tank vessels and barges are responsible for the majority of oil spilled by volume.

SUMMARY OF PROVISIONS

The Oil Spill Prevention Act of 2008 would implement the International Maritime Organization (IMO) amendment requiring a double hull or an additional protective layer around the fuel tank for non-tank vessels, clarify the Coast Guard's authority to direct the movement of vessel traffic in a Vessel Traffic Services (VTS) area, require the Coast Guard to assess the need for improved vessel traffic management measures, create a medical review program for merchant mariners, and require the Coast Guard to conduct a study into the causes of marine accidents.

LEGISLATIVE HISTORY

S. 2699 was introduced on March 4, 2008, by Senators Lautenberg and Boxer and was referred to the Committee on Commerce, Science, and Transportation. A hearing on oil spill prevention was held on March 4, 2008. On May 15, 2008, the Committee met in open executive session and ordered S. 2699 reported favorably with amendment.

Staff assigned to this legislation are Dabney Hegg, Democratic Senior Professional Staff Member, and Todd Bertosen, Republican Senior Counsel.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE
Washington, DC, June 26, 2008.

Hon. DANIEL K. INOUE,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2699, the Oil Spill Prevention Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

S. 2699—Oil Spill Prevention Act of 2008

S. 2699 would address spills of fuel oil from vessels and other maritime safety issues. Based on information provided by the U.S.

Coast Guard, CBO estimates that implementing S. 2699 would cost about \$1 million in 2009. We estimate that ongoing costs (to implement and enforce new standards) would total less than \$500,000 a year. Enacting S. 2699 would not affect revenues or direct spending.

Under S. 2699, all new vessels that have an aggregate capacity of at least 600 cubic meters of fuel oil would be required to be built with a double hull or an additional protective layer on their fuel tanks. The bill also would require the Coast Guard to conduct studies on marine casualties and on the need for tractor tugboats to escort vessels carrying large amounts of fuel.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provision that is necessary for the ratification or implementation of international treaty obligations. CBO has determined that section 2 of S. 2699 falls within that exclusion; therefore, we have not reviewed it for intergovernmental or private-sector mandates.

The remaining provisions of S. 2699 contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. One of those provisions, however, contains a private-sector mandate as defined in UMRA because it would require U.S. merchant mariners to comply with new medical standards. The bill would require the U.S. Coast Guard to establish medical standards that ensure that the physical condition of all merchant mariners (approximately 220,000 currently employed) is adequate for them to safely carry out their duties on board vessels. The standards would be based on a future study by the U.S. Coast Guard and consultation with the advisory committee established under the bill. According to industry experts, however, those standards would likely be more stringent than current regulations. Potential costs for merchant mariners to comply with the medical standards could be the cost of more frequent physical examinations, additional medical tests, and any reduction in income that might result from losing one's job for not meeting the medical requirements. At this time, CBO has no basis for predicting the scope or stringency of the new standards that the bill would require. Because the cost to comply with those standards would depend on regulations to be developed by the U.S. Coast Guard, CBO cannot determine whether the cost of the mandate would exceed the annual threshold established in UMRA for private-sector mandates, (\$136 million in 2008, adjusted annually for inflation).

The CBO staff contacts for this estimate are Deborah Reis (for federal costs), and Jacob Kuipers (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

This bill is intended to minimize the damage of an accidental oil spill by requiring a double hull or an additional protective layer around the fuel tank for non-tank vessels. This requirement already exists through the IMO Marine Environment Protection Committee (MEPC) so it affects those already subject to the rules of the IMO. Additionally, any person affected by the creation of the medical advisory committee in this bill would be contributing to a safer and healthier maritime industry.

ECONOMIC IMPACT

This legislation would not have an adverse economic impact on the Nation. This bill would promote a safer and more efficient maritime environment, which could ultimately reduce the monetary consequences of oil spills or other manmade disasters.

PRIVACY

S. 2699 would have minimal effect on the privacy rights of individuals. It is anticipated that the medical national registry will include protections to ensure the privacy of individuals' sensitive health records.

PAPERWORK

The Committee does not anticipate a major increase in paperwork burdens for individuals or business resulting from the passage of this legislation. Any additional paperwork for the Coast Guard that may result from the double hull requirement or medical advisory committee is aimed at fostering a safer maritime environment.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

Section 1 would title S. 2699 as the "Oil Spill Prevention Act of 2008."

Section 2. Oil Fuel Tank Protection.

In March 2006, the IMO MEPC adopted a resolution to establish design requirements for protectively locating fuel tanks on all ships with an aggregate oil fuel capacity of 600 cubic meters or more that have a building contract on or after August 1, 2007, or a delivery date on or after August 1, 2010. The resolution limits fuel oil tank capacity to 2,500 cubic meters or approximately 660 thousand gallons. Additionally, it includes inspection requirements for wing and double-bottom tanks or spaces when approving the design and construction of ships.

The IMO resolution offers two mechanisms through which a vessel can be designed to meet the new requirement to add an addi-

tional protective layer near the fuel tanks for non-tank vessels. Vessel operators can either install a double-hull or some form of bulkhead or shell plating surrounding a fuel tank. If operators install a bulkhead or shell plating, they must place the fuel tank a calculated safe distance from both the side and bottom of the non-tank vessel. The resolution also requires that fuel oil piping within specific proximity to the actual sides or bottom of the vessel be fitted with readily accessible valves or similar closing devices within or immediately adjacent to the fuel oil tank. The valves will be required to close in case of remote system failure and remain closed at sea any time the tank contains fuel oil. As a signatory to the International Convention to Prevent Pollution from Ships (MARPOL) Annex I, amendment 12A, the United States has an obligation to act in accordance with the convention.

Section 2 would implement the IMO amendment to the MARPOL Annex I which establishes design requirements for protectively locating fuel tanks on all ships consistent with Amendment 12A.

Section 3. Maritime Emergency Prevention.

Section 3 would clarify the Coast Guard's authority to direct the movement of vessel traffic in a VTS area and would direct the Coast Guard to conduct an assessment of the need for new, expanded, or improved vessel traffic management measures. The provision also would set forth additional navigational training requirements for Coast Guard VTS watch stander personnel.

Section 4. Merchant Mariner Medical Advisory Committee, Medical Standards, and Medical Requirements.

Section 4 would establish an advisory committee of medical subject matter specialists familiar with the unique maritime occupational environment. These subject matter specialists would: (1) advise the Secretary on medical matters relating to the issuance of Merchant Mariner Credentials; (2) recommend medical standards and guidelines for the physical qualifications of mariners; and (3) develop training materials in order to certify that medical examiners in a national registry established by this amendment satisfy performance standards. This provision would provide a way for the Coast Guard to standardize the training for medical examiners and the reporting of medical examinations. This registry would ensure a basic level of quality and the timely management of the medical review process. This language would create a medical review process and national registry of examiners similar to that within the Federal Motor Carrier Safety Administration and the Federal Aviation Administration. This provision is based on a National Transportation Safety Board (NTSB) recommendation.

Section 5. Marine Casualty Study.

Section 5 would require the Coast Guard to conduct a meaningful study into the causes of marine accidents.

Section 6. Coast Guard Study on the Use of Tractor Tugs.

This section would direct the Coast Guard to perform a study at the five highest volume ports in the United States on the use of tractor tug escorts that aid in avoiding shipping accidents by escorting vessels that transport or carry a high volume of oil. The use

of tractor tug escorts is mandated by State regulation and/or by order of the Captain of the Port in a number of west coast ports. These new generation tugboats are powerful enough to hold vessels in a static location in the event of a mechanical problem or the onset of fog. These tugs also provide a number of other safety improvements by providing increased maneuverability in the tight confines of a harbor.

Section 7. NTSB to Share Information with State Investigators.

Section 7 clarifies that both State and Federal government agencies are eligible to cooperate with marine investigations conducted by the NTSB.

Section 8. Trained Pollution Investigators.

Section 8 would require the Coast Guard to have at least one pollution investigator either on duty or on a recall status at all time in each Sector Command pursuant to recommendations of the Incident Specific Preparedness Review for the response to the *Cosco Busan* collision of November 7, 2007.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

PORTS AND WATERWAYS SAFETY ACT OF 1972

SEC. 4. VESSEL OPERATING REQUIREMENTS.

[33 U.S.C. 1223]

(a) IN GENERAL.—Subject to the requirements of section 5, the Secretary—

(1) in any port or place under the jurisdiction of the United States, in the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to section 11, may construct, operate, maintain, improve, or expand vessel traffic services, consisting of measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment and may include, but need not be limited to one or more of the following: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways;

(2) shall require appropriate vessels which operate in an area of a vessel traffic service to utilize or comply with that service;

(3) may require vessels to install and use specified navigation equipment, communications equipment, electronic relative motion analyzer equipment, or any electronic or other device necessary to comply with a vessel traffic service or which is necessary in the interests of vessel safety: *Provided*, That the Secretary shall not require fishing vessels under 300 gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title or recreational vessels 65 feet or less to possess or use the equipment or devices required by this subsection solely under the authority of this Act;

(4) may control vessel traffic in areas subject to the jurisdiction of the United States which the Secretary determines to be hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

- (A) specifying times of entry, movement, or departure;
- (B) establishing vessel traffic routing schemes;
- (C) establishing vessel size, speed, draft limitations and vessel operating conditions; and

(D) restricting operation, in any hazardous area or under hazardous conditions, to vessels which have particular operating characteristics or capabilities which he considers necessary for safe operation under the circumstances;

(5) may require the receipt of prearrival messages from any vessel, destined for a port or place subject to the jurisdiction of the United States, in sufficient time to permit advance vessel traffic planning prior to port entry, which shall include any information which is not already a matter of record and which the Secretary determines necessary for the control of the vessel and the safety of the port or the marine environment; and

(6) may prohibit the use on vessels of electronic or other devices that interfere with communication and navigation equipment, except that such authority shall not apply to electronic or other devices certified to transmit in the maritime services by the Federal Communications Commission and used within the frequency bands 157.1875-157.4375 MHz and 161.7875-162.0375 MHz.

(b) SPECIAL POWERS.—The Secretary may order any vessel, in a port or place subject to the jurisdiction of the United States or in the navigable waters of the United States, to ~~operate or~~ *operate, including direction to change the vessel's heading and speed, or anchor* in a manner he directs if—

(1) he has reasonable cause to believe such vessel does not comply with any regulation issued under this Act or any other applicable law or treaty;

(2) he determines that such vessel does not satisfy the conditions for port entry set forth in section 9; or

(3) by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such vessel, he is satisfied that such directive is justified in the interest of safety.

(c) PORT ACCESS ROUTES.—

(1) In order to provide safe access routes for the movement of vessel traffic proceeding to or from ports or places subject to the jurisdiction of the United States, and subject to the requirements of paragraph (3) hereof, the Secretary shall designate necessary fairways and traffic separation schemes for vessels operating in the territorial sea of the United States and in high seas approaches, outside the territorial sea, to such ports or places. Such a designation shall recognize, within the designated area, the paramount right of navigation over all other uses.

(2) No designation may be made by the Secretary pursuant to this subsection, if such a designation, as implemented, would deprive any person of the effective exercise of a right granted by a lease or permit executed or issued under other applicable provisions of law: *Provided*, That such right has become vested prior to the time of publication of the notice required by clause (A) of paragraph (3) hereof: *Provided further*, That the determination as to whether the designation would so deprive any such person shall be made by the Secretary, after consultation with the responsible official under whose authority the lease was executed or the permit issued.

(3) Prior to making a designation pursuant to paragraph (1) hereof, and in accordance with the requirements of section 5, the Secretary shall—

(A) within six months after date of enactment of this Act (and may, from time to time thereafter), undertake a study of the potential traffic density and the need for safe access routes for vessels in any area for which fairways or traffic separation schemes are proposed or which may otherwise be considered and shall publish notice of such undertaking in the Federal Register;

(B) in consultation with the Secretary of State, the Secretary of the Interior, the Secretary of Commerce, the Secretary of the Army, and the Governors of affected States, as their responsibilities may require, take into account all other uses of the area under consideration (including, as appropriate, the exploration for, or exploitation of, oil, gas, or other mineral resources, the construction or operation of deepwater ports or other structures on or above the seabed or subsoil of the submerged lands or the Outer Continental Shelf of the United States, the establishment or operation of marine or estuarine sanctuaries, and activities involving recreational or commercial fishing); and

(C) to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved.

(4) In carrying out his responsibilities under paragraph (3), the Secretary shall proceed expeditiously to complete any study undertaken. Thereafter, he shall promptly issue a notice of proposed rulemaking for the designation contemplated or shall have published in the Federal Register a notice that no designation is contemplated as a result of the study and the reason for such determination.

(5) In connection with a designation made pursuant to this subsection, the Secretary—

(A) shall issue reasonable rules and regulations governing the use of such designated areas, including the applicability of rules 9 and 10 of the International Regulations for Preventing Collisions at Sea, 1972, relating to narrow channels and traffic separation schemes, respectively, in waters where such regulations apply;

(B) to the extent that he finds reasonable and necessary to effectuate the purposes of the designation, make the use of designated fairways and traffic separation schemes mandatory for specific types and sizes of vessels, foreign and domestic, operating in the territorial sea of the United States and for specific types and sizes of vessels of the United States operating on the high seas beyond the territorial sea of the United States;

(C) may, from time to time, as necessary, adjust the location or limits of designated fairways or traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise: Provided, That such an adjustment will not, in the judgment of the Secretary, unacceptably adversely affect the purpose

for which the existing designation was made and the need for which continues; and

(D) shall, through appropriate channels, (i) notify cognizant international organizations of any designation, or adjustment thereof, and (ii) take action to seek the cooperation of foreign States in making it mandatory for vessels under their control to use any fairway or traffic separation scheme designated pursuant to this subsection in any area of the high seas, to the same extent as required by the Secretary for vessels of the United States.

(d) EXCEPTION.—Except pursuant to international treaty, convention, or agreement, to which the United States is a party, this Act shall not apply to any foreign vessel that is not destined for, or departing from, a port or place subject to the jurisdiction of the United States and that is in—

(1) innocent passage through the territorial sea of the United States, or

(2) transit through the navigable waters of the United States which form a part of an international strait.

(e) COOPERATIVE AGREEMENTS.—

(1) The Secretary may enter into cooperative agreements with public or private agencies, authorities, associations, institutions, corporations, organizations, or other persons to carry out the functions under subsection (a)(1).

(2) A nongovernmental entity may not under this subsection carry out an inherently governmental function.

(3) As used in this paragraph, the term “inherently governmental function” means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of judgment in making a decision for the Government.

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART B. INSPECTION AND REGULATION OF VESSELS

CHAPTER 33. INSPECTION GENERALLY

§ 3306. Regulations

(a) To carry out this part and to secure the safety of individuals and property on board vessels subject to inspection, the Secretary shall prescribe necessary regulations to ensure the proper execution of, and to carry out, this part in the most effective manner for—

(1) the design, construction, alteration, repair, and operation of those vessels, including superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew, sailing school instructors, and sailing school students;

(2) lifesaving equipment and its use;

- (3) firefighting equipment, its use, and precautionary measures to guard against fire;
- (4) inspections and tests related to paragraphs (1), (2), and (3) of this subsection; and
- (5) the use of vessel stores and other supplies of a dangerous nature.

(b)(1) Equipment and material subject to regulation under this section may not be used on any vessel without prior approval of the Secretary.

(2) Except with respect to use on a public vessel, the Secretary may treat an approval of equipment or materials by a foreign government as approval by the Secretary for purposes of paragraph (1) if the Secretary determines that—

(A) the design standards and testing procedures used by that government meet the requirements of the International Convention for the Safety of Life at Sea, 1974;

(B) the approval of the equipment or material by the foreign government will secure the safety of individuals and property on board vessels subject to inspection; and

(C) for lifesaving equipment, the foreign government—

(i) has given equivalent treatment to approvals of lifesaving equipment by the Secretary; and

(ii) otherwise ensures that lifesaving equipment approved by the Secretary may be used on vessels that are documented and subject to inspection under the laws of that country.

(c) In prescribing regulations for sailing school vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of vessels likely to be certified as sailing school vessels. The regulations shall—

(1) reflect the specialized nature of sailing school vessel operations, and the character, design, and construction of vessels operating as sailing school vessels; and

(2) include requirements for notice to sailing school instructors and sailing school students about the specialized nature of sailing school vessels and applicable safety regulations.

(d) In prescribing regulations for nautical school vessels operated by the United States Merchant Marine Academy or by a State maritime academy (as defined in section 51102 of this title), the Secretary shall consider the function, purpose, and operation of the vessels, their routes, and the number of individuals who may be carried on the vessels.

(e) When the Secretary finds it in the public interest, the Secretary may suspend or grant exemptions from the requirements of a regulation prescribed under this section related to lifesaving and firefighting equipment, muster lists, ground tackle and hawsers, and bilge systems.

(f) In prescribing regulations for offshore supply vessels, the Secretary shall consider the characteristics, methods of operation, and the nature of the service of offshore supply vessels.

(g) In prescribing regulations for fish processing or fish tender vessels, the Secretary shall consult with representatives of the private sector having experience in the operation of these vessels. The regulations shall reflect the specialized nature and economics of

fish processing or fish tender vessel operations and the character, design, and construction of fish processing or fish tender vessels.

(h) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for vessels of at least 100 gross tons but less than 300 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of section 2113(4) of this title.

(i) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for former public vessels of the United States of at least 100 gross tons but less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of section 2113(5) of this title.

(j) The Secretary may establish by regulation a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels.

(k)(1) *All new vessels of the United States with a building contract date after the date of enactment of the Oil Spill Prevention Act of 2008, or delivered after August 1, 2010, with an aggregate capacity of 600 cubic meters or more of oil fuel, shall comply with the requirements of Regulation 12A under Annex I to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, entitled "Oil Fuel Tank Protection".*

(2) *REGULATIONS.—The Secretary may prescribe regulations to amend or modify the requirements of this subsection. Any such regulation shall be considered to be an interpretive rule for the purposes of section 553 of title 5.*

(3) *In this subsection, the term "oil fuel" means any oil used as fuel in connection with the propulsion and auxiliary machinery of the vessel in which such oil is carried.*

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART E. MERCHANT SEAMEN LICENSES, CERTIFICATES, AND DOCUMENTS

CHAPTER 71. LICENSES AND CERTIFICATES OF REGISTRY

§7115. Merchant mariner medical advisory committee, medical standards, and medical requirements

(a) *ESTABLISHMENT.—*

(1) *IN GENERAL.—There is established a Merchant Mariner Medical Advisory Committee.*

(2) *FUNCTIONS.—The Committee shall—*

(A) *advise the Secretary on matters relating to—*

(i) *medical certification determinations for issuance of merchant mariner credentials;*

- (ii) *medical standards and guidelines for the physical qualifications of operators of commercial vessels;*
- (iii) *medical examiner education;*
- (iv) *medical research; and,*

(B) *develop, as appropriate, specific courses and materials for medical examiners listed in the national registry established under this section.*

(3) *MEMBERSHIP.—*

(A) *IN GENERAL.—The Committee shall consist of the chief medical examiner and—*

- (i) *10 individuals who are health-care professionals with particular expertise, knowledge, or experience regarding the medical examinations of merchant mariners or occupational medicine; and*

- (ii) *2 individuals who are professional mariners with knowledge and experience in mariner occupational requirements.*

(B) *STATUS OF MEMBERS.—Except for the chief medical examiner, members of the Committee shall not be considered Federal employees or otherwise in the service or the employment of the Federal Government, except that members shall be considered special Government employees, as defined in section 202(a) of title 18 and shall be subject to any administrative standards of conduct applicable to the employees of the department in which the Coast Guard is operating.*

(C) *COMPENSATION; REIMBURSEMENT.—Except for the chief medical examiner, members of the Committee shall serve without compensation, except that, while engaged in the performance of duties away from their homes or regular places of business of the member, the member of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.*

(b) *APPOINTMENTS; TERMS; VACANCIES; ORGANIZATION.—*

(1) *The Secretary shall appoint the members of the Committee, and each member shall serve at the pleasure of the Secretary.*

(2) *The members shall be appointed for a term of 3 years, except that, of the members first appointed, 3 members shall be appointed for a term of 2 years and 3 members shall be appointed for a term of 1 year.*

(3) *Any member appointed to fill the vacancy prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.*

(4) *The Secretary shall designate 1 member other than the chief medical examiner as the Chairman and 1 member other than the chief medical examiner as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.*

(5) *STAFF; SERVICES.—The Secretary shall furnish to the Committee the personnel and services as are considered necessary for the conduct of its business.*

(6) *FIRST MEETING.*—No later than 6 months after the date of enactment of the Oil Spill Prevention Act of 2008, the Committee shall hold its first meeting.

(c) *CHIEF MEDICAL EXAMINER.*—The Secretary shall appoint an employee of the Coast Guard who will serve as a chief medical examiner and who shall hold a position under section 3104 of title 5 relating to employment of specially qualified scientific and professional personnel, and shall be paid under section 5376 of title 5, relating to pay for certain senior-level positions.

(d) *MEDICAL STANDARDS AND REQUIREMENTS.*—

(1) *In general.*—The Secretary, with the advice of the Committee, shall—

(A) establish, review, and revise—

(i) medical standards for merchant mariners that will ensure that the physical condition of merchant mariners is adequate to enable them to safely carry out their duties on board vessels;

(ii) requirements for periodic physical examinations of such merchant mariners performed by a medical examiner (who shall be a license physician) who has, at a minimum, self-certified that he or she has completed training in physical and medical examination standards and is listed on a registry of medical examiners maintained in accordance with subsection (e) of this section;

(B) require each such merchant mariner to have a current valid medical certificate;

(C) conduct periodic reviews of a select number of medical examiners on the national registry to ensure that proper examinations of merchant mariners are being conducted;

(D) require each such medical examiner to, at a minimum, self-certify that he or she has completed specific training, including refresher courses, to be listed in the registry;

(E) require medical examiners to transmit the name of the applicant and numerical identifier, as determined by the Coast Guard, for any completed medical examination report required under regulations established by the Secretary electronically to the chief medical examiner on monthly basis; and

(F) periodically review a representative sample of the medical examiners' reports associated with the name and numerical identifiers of applicants transmitted under subparagraph (E) for errors, omissions, or other indications of improper certification.

(2) *MONITORING PERFORMANCE.*—The Secretary shall investigate patterns of errors or improper certification by medical examiners. If the Secretary finds that a medical examiner has issued a medical certificate to a merchant mariner who fails to meet the applicable standards at the time of the examination or that a medical examiner has falsely claimed to have completed training in physical and medical examination standards as required by this section, the Secretary may remove the name of

such medical examiner from the registry and may void the medical certificate of the applicant or holder.

(e) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, acting through the Commandant of the Coast Guard—

(1) shall establish and maintain a current national registry of medical examiners (who shall be licensed physicians) who are qualified to perform examinations and issue medical certificates;

(2) shall remove from the registry the name of any medical examiner who fails to meet or maintain the qualifications established by the Secretary for being listed in the registry or otherwise does not meet the requirements of this section or a regulation issued under this section;

(3) shall accept as valid only medical certificates issued by persons on the national registry of medical examiners;

(4) may make participation of medical examiners in the national registry voluntary if such a change will enhance the safety of merchant mariners holding United States Coast Guard issued credentials; and

(5) shall include in the registry established under paragraph (1) licensed physicians who are certified by the Secretary of Transportation to perform medical examinations of operators of commercial motor vehicles under section 31149 of title 49 and airmen.

(f) MEDICAL EXAMINER DEFINED.—In this section, the term ‘medical examiner’ means an individual licensed, certified, or registered in accordance with the regulations issued by the Coast Guard as a medical examiner.

(g) COORDINATION.—The Secretary shall coordinate, where appropriate, with the Secretary of Transportation to utilize existing systems, processes, and procedures where appropriate synergies exist in the administration of the Federal Motor Carrier Safety Administration’s Medical Program authorized under section 31149 of title 49 and the Federal Aviation Administration’s Office of Aerospace Medicine authorized under section 44702 of that title.

(h) REGULATIONS.—The Secretary may issue such regulations as may be necessary to carry out this section.

TITLE 49. TRANSPORTATION

SUBTITLE II. OTHER GOVERNMENT AGENCIES

CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER III. AUTHORITY

§ 1131. General authority

(a) GENERAL.—

(1) The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of—

(A) an aircraft accident the Board has authority to investigate under section 1132 of this title or an aircraft accident involving a public aircraft as defined by section

40102(a)(37) of this title other than an aircraft operated by the Armed Forces or by an intelligence agency of the United States;

(B) a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State;

(C) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train;

(D) a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment;

(E) a major marine casualty (except a casualty involving only public vessels) occurring on or under the navigable waters, internal waters, or the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988, or involving a vessel of the United States (as defined in section 2101(46) of title 46), under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; and

(F) any other accident related to the transportation of individuals or property when the Board decides—

(i) the accident is catastrophic;

(ii) the accident involves problems of a recurring character; or

(iii) the investigation of the accident would carry out this chapter.

(2)(A) Subject to the requirements of this paragraph, an investigation by the Board under paragraph (1)(A)-(D) or (F) of this subsection has priority over any investigation by another department, agency, or instrumentality of the United States Government. The Board shall provide for appropriate participation by other departments, agencies, or instrumentalities in the investigation. However, those departments, agencies, or instrumentalities may not participate in the decision of the Board about the probable cause of the accident.

(B) If the Attorney General, in consultation with the Chairman of the Board, determines and notifies the Board that circumstances reasonably indicate that the accident may have been caused by an intentional criminal act, the Board shall relinquish investigative priority to the Federal Bureau of Investigation. The relinquishment of investigative priority by the Board shall not otherwise affect the authority of the Board to continue its investigation under this section.

(C) If a Federal law enforcement agency suspects and notifies the Board that an accident being investigated by the Board under subparagraph (A), (B), (C), or (D) of paragraph (1) may have been caused by an intentional criminal act, the Board, in consultation with the law enforcement agency, shall take necessary actions to ensure that evidence of the criminal act is preserved.

(3) This section and sections 1113, 1116(b), 1133, and 1134(a) and (c)-(e) of this title do not affect the authority of another department, agency, or instrumentality of the

【Government】 *the Federal government or of a State government* to investigate an accident under applicable law or to obtain information directly from the parties involved in, and witnesses to, the accident. The Board and other departments, agencies, and instrumentalities shall ensure that appropriate information developed about the accident is exchanged in a timely manner.

(b) ACCIDENTS INVOLVING PUBLIC VESSELS.—

(1) The Board or the head of the department in which the Coast Guard is operating shall investigate and establish the facts, circumstances, and cause or probable cause of a marine accident involving a public vessel and any other vessel. The results of the investigation shall be made available to the public.

(2) Paragraph (1) of this subsection and subsection (a)(1)(E) of this section do not affect the responsibility, under another law of the United States, of the head of the department in which the Coast Guard is operating.

(c) ACCIDENTS NOT INVOLVING GOVERNMENT MISFEASANCE OR NONFEASANCE.—

(1) When asked by the Board, the Secretary of Transportation or the Secretary of the department in which the Coast Guard is operating may—

(A) investigate an accident described under subsection (a) or (b) of this section in which misfeasance or nonfeasance by the Government has not been alleged; and

(B) report the facts and circumstances of the accident to the Board.

(2) The Board shall use the report in establishing cause or probable cause of an accident described under subsection (a) or (b) of this section.

(d) ACCIDENTS INVOLVING PUBLIC AIRCRAFT.—The Board, in furtherance of its investigative duties with respect to public aircraft accidents under subsection (a)(1)(A) of this section, shall have the same duties and powers as are specified for civil aircraft accidents under sections 1132(a), 1132(b), and 1134(a), (b), (d), and (f) of this title.

(e) ACCIDENT REPORTS.—The Board shall report on the facts and circumstances of each accident investigated by it under subsection (a) or (b) of this section. The Board shall make each report available to the public at reasonable cost.